

Message Text

SECRET

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ACTION SS-25

INFO OCT-01 ADP-00 SSO-00 NSCE-00 /026 W

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FM AMEMBASSY LIMA

TO SECSTATE WASHDC IMMEDIATE 6011

INFO AMEMBASSY SANTIAGO IMMEDIATE

S E C R E T SECTION 1 OF 2 LIMA 4355

EXDIS

E. O. 11652: GDS

TAGS OCON , CI

SUBJ: CHILE: COPPER DISPUTES

SUMMARY: FIRST SECRET MEETING HELD WITH ALMEYDA, CARDEMARTORI

AND URRUTIA AT CHILEAN EMBASSY RESIDENCE SUNDAY MORNING
JUNE 24 CONSISTED PRINCIPALLY OF DETAILED EXPOSITION BY
KUBISCH AND HENNESSY OF USG REPOSE TO CHILEAN PROPOSAL
OF MARCH AND PRESENTATION OF U. S. COUNTERPROPOSAL. ALMEYDA
ACKNOWLEDGED USG EFFORT TO TAKE INTO ACCOUNT MAJOR CHILEAN
CONCERNS IN ADVANCING NEW FORMULA AND SAID CHILEAN SIDE
WOULD ASK QUESTIONS AND SEEK CLARIFICATION IN SUBSEQUENT
MEETING AFTER HAVING HAD CHANCE STUDY U. S. PROPOSAL.
CHILEAN ACCEPTANCE OR SUGGESTIONS FOR " ADDITIONS" TO
PROPOSAL WOULD BE MADE AT HIGHEST GOC LEVEL AND NO
DEFINITIVE RESPONSE WOULD BE POSSIBLE FOR THE MOMENT.
END SUMMARY.

1. ASST. SECRETARY KUBISCH AND ASST. SECRETARY HENNESSY,
ACCOMPANIED BY RAYMOND GONZALEZ (EMBASSY) MET AT CHILEAN
RESIDENCE, LIMA, MORNING JUNE 24 WITH CLODOMIRO ALMEYDA,
PC DEPUTY CARDEMARTORI, AND CODELCO NEW YORK REP JAVIER
URRUTIA. AFTER BRIEF WELCOMING AND INTRODUCTORY REMARKS,
ALMEYDA ASKED KUBISCH FOR USG RESPONSE TO CHILEAN PROCEDURAL
PROPOSAL OF USING THE 1914 TREATY MADE DURING BILATERAL TALKS
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THIS SUBJECT LAST MARCH.

2. KUBISCH STRESSED THAT HIS PRESENCE IN LIMA AND AT MEETING REFLECTED STRONG USG DESIRE REACH SETTLEMENT THIS PROBLEM. HE REFERRED TO SECRETARY'S MEETING IN BUENOS AIRES WITH PRESIDENT ALLENDE AND JOINT CONCLUSION FROM THAT MEETING THAT LONG TRADITION OF FRIENDSHIP BETWEEN TWO COUNTRIES SHOULD NOT BE FURTHER DAMAGED BY COPPER PROBLEMS. SECRETARY HAD MADE CLEAR USG PREPARED MEET WITH GOC, ON BASIS FULL EQUALITY AND MUTUAL RESPECT, IN JOINT EFFORT TO ATTAIN COMMON OBJECTIVES. USG PREPARED TO ACCEPT WHATEVER INTERNAL POLITICAL, ECONOMIC AND SOCIAL POLICIES CHILEAN PEOPLE WANT FOR THEMSELVES AND THERE SHOULD BE NO MIS-UNDERSTANDING OF USG ATTITUDE IN THIS REGARD.

3. HENNESSY THEN SUMMARIZED HISTORY OF PREVIOUS NEGOTIATIONS WHICH HE SEPARATED INTO TWO STAGES. FIRST OR MULTILATERAL PHASE STEMMED FROM PARIS CLUB MEETING IN FEBRUARY QOUW SHORTLY AFTER CHILEAN ACTION AGAINST COMPANIES. FOUR INTENSIVE MEETINGS IN WHICH AMBASSADOR LETELLIER TOOK PART LED TO APRIL 19, 1972 AGREEMENT. HENNESSY STATED USG DECISION TO SIGN AGREEMENT REPRESENTED MAJOR DEMONSTRATION OUR GOOD WILL AND CONCRETE PROOF OUR WILLINGNESS ACCEPT MULTILATERAL FRAMEWORK FOR SOLUTION FINANCIAL AND COPPER QUESTIONS. HE HIGHLIGHTED IMPORTANCE OF ART 4 WHICH PROVIDED MECHANISM FOR CARRYING OUT DIRECT BILATERAL SETTLEMENT WITH COMPANIES OR USG, ALTHOUGH HE ACKNOWLEDGED THERE WERE SOME DIFFERENCES IN INTERPRETATION BY CHILEANS ON THIS ARTICLE. PARIS CLUB AGREEMENT WAS AT THE TIME SEEN BY CHILEANS AND URGED ON US AS IMPORTANT BECAUSE (A) IT WOULD PROVIDE CHILE WITH TIME IT NEEDED TO PREPARE WAY FOR BILATERAL SOLUTION (B) USG SIGNATURE WAS POSITIVE ACT WHICH WOULD IMPROVE DOMESTIC POLITICAL CLIMATE. HENNESSY THEN RECOUNTED EFFECTS OF COPPER TRIBUNAL RULING IN SEPTEMBER, WHICH AFTER ASSURANCES AT TIME OF PARIS CLUB SIGNING WAS A GREAT DISAPPOINTMENT AS IT SEEMED TO CLOSE DOOR.

4. HENNESSY THEN DESCRIBED SECOND OR BILATERAL PHASE OF PREVIOUS NEGOTIATIONS RECOUNTING DECEMBER 1972 MEETING

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WITH GOC, ALLUDED BRIEFLY TO 1914 TREATY AS ONE OF SEVERAL PROCEDURES WHICH PERHAPS MIGHT BE FOLLOWED, WHILE USG INDICATED WE HAD PERFECTLY SUITABLE MECHANISM IN PARIS CLUB AGREEMENT. AT SECOND FORMAL MEETING IN MARCH WHILE CHILEAN SIDE SHOWED DISAPPOINTMENT USG NOT PREPARED GIVE DEFINITIVE REPLY TO 1914 TREATY, THIS WAS UNFOUNDED SINCE GOC HAD NOT MADE ANY FORMAL PRE-

SENTATION OF THIS AS A FIRM OFFER, BUT MERELY A PASSING REFERENCE. SUBSEQUENT CONVERSATIONS BETWEEN CRIMMINS, HENNESSY, ALMEYDA- LETELLIER HAD SUGGESTED ADVANTAGE OF MOVING AWAY FROM LARGE, FORMAL BILATERAL MEETING TO SMALLER MORE PRACTICAL MEETING SUCH AS TODAY' S IN WHICH WE COULD TEST GOOD WILL TO REACH SOLUTION.

5. KUBISCH THEN OUTLINED PREFERRED U. S. SOLUTIONS TO COPPER PROBLEMS WITH AMERICAN COMPANIES: (A) GOC SETTLE DIRECTLY WITH COMPANIES; (B) IF THIS NOT POSSIBLE, GOC NEGOTIATE BILATERALLY MATTER OF COMPENSATION; (C) IF LATTER NOT POSSIBLE, GOC ENTER INTO ARBITRATION PROCEDURE WITH COMPANIES; E. G. SUCH AS PROVIDED FOR IN IBRD. GOC HAS SAID NONE OF THESE ACCEPTABLE AND STATED IT CANNOT COMPENSATE COMPANIES NOW. GOC HAS MANIFESTED MORE TIME NECESSARY TO WORK OUT SOLUTION AND SUGGESTED SOME THIRD PARTY PROCEEDING MIGHT BE HELPFUL, PROPOSING 1914 TREATY.

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ACTION SS-25

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TO SECSTATE WASHDC IMMEDIATE 6012

INFO AMEMBASSY SANTIAGO IMMEDIATE

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E X D I S

6. KUBISCH UNDERSCORED GREAT IMPORTANCE WHICH USG ATTACHES TO GOC UNDERTAKINGS IN PARIS CLUB AND DECLARED WE MOST RELUCTANT TO TURN ATTENTION AWAY FROM THESE COMMITMENTS FOR UNCERTAINTIES OF THIRD PARTY PROCEDURE. HE EXPRESSED BELIEF PARIS CLUB MEMBERS WOULD BE SURPRISED AT GOC INTERPRETATION TO EFFECT ITS OBLIGATION TO HONOR DEBTS AND MAKE JUST COMPENSATION NOT APPLICABLE TO COPY PROBLEM, WHICH WAS MAJOR ISSUE AT PARIS. NEVERTHELSS, BECAUSE OF IMPORTANCE WE ATTACH TO RE-

SOLUTION OF PROBLEM WE PREPARED EXPLORE SOME PROCEDURE
OTHER THAN ART 4 THAT MEETS OUR MUTUAL CONCERNS.

7. AS WE UNDERSTAND IT, KUBISCH CONTINUED, TWO PRINCIPAL
CHILEAN CONCERNS INCLUDE (A) NEED FOR TIME TO PREPARE
GROUND FOR SETTLEMENT AND (B) OBJECTIVE FINDING BY
IMPARTIAL THIRD PARTY. PRESIDENT ALLENDE HAS ALSO SAID
GOC NEITHER SIMPLY TRYING TO DELAY SETTLEMENT NOR GAIN
TIME BUT IS PREPARED SEEK A TRUE SOLUTION. USG WILLING
ATTEMPT TO USE ESSENTIAL ELEMENTS OF CHILEAN PROPOSAL
AS BASIS FOR MOVING FORWARD. HOWEVER USG ASKING
FOR ONE THING MORE: THAT PROCEDURE WE AGREE UPON
RESOLVES PROBLEM ONE WAY OR OTHER AND WITHIN REASONABLE
TIME. USG HAD CAREFULLY CONSIDERED NOT ONLY GOC
PROPOSAL USE 1914 TREATY BUT ALSO PROVISIONS OF 1929
INTER- AMERICAN ARBITRATION TREATY AND 1899 HAGUE CONVENTION.
KUBISCH SAID USG HAS PREPARED PROPOSAL WHICH CARRIES OUT
OBJECTIVES THESE INSTRUMENTS AND ALSO MEETS MAJOR CON-

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CERNS OF BOTH SIDES.

8. KUBISCH READ PROPOSED PROCEDURE FOR SETTLEMENT OF
COPPER DISPUTES AS FOLLOWS: BEGIN TEXT: IT IS PRO-
POSED THAT THE UNITED STATES AND CHILE SUBMIT THE
QUESTION OF THE COMPENSATION TO WHICH THE U. S. COPPER
COMPANIES MAY BE ENTITLED UNDER INTERNATIONAL LAW TO
THE DECISION OF AN IMPARTIAL THIRD PARTY. BOTH
GOVERNMENTS WOULD AGREE TO ACCEPT AND CARRY OUT THE
RESULT OF THAT PROCEEDING. THE TWO PARTIES WOULD
ESTABLISH THE IMPARTIAL TRIBUNAL BY MUTUAL AGREEMENT
AND STIPULATE APPROPRIATE TERMS OF REFERENCE AND RULES
OF PROCEDURE. THESE RULES SHOULD INCLUDE A TIME LIMIT
FOR THE COMPLETION OF PROCEDURES AND THE RENDERING OF
THE DECISION. THE PANEL SHOULD HAVE THE AUTHORITY TO
CONSIDER ALL OF THE ISSUES NECESSARY TO DETERMINE
WHETHER THE COPPER COMPANIES ARE ENTITLED TO PAYMENT
OF COMPENSATION AND, IF SO, TO ESTABLISH THE AMOUNT.
IT IS FURTHER PROPOSED THAT THE TWO GOVERNMENTS CONSTITUTE
A PANEL THAT WOULD BE MUTUALLY ACCEPTABLE AND DRAFT THE
NECESSARY TERMS OF REFERENCE AND RULES OF PROCEDURE.
END TEXT.

9. KUBISCH THEN GAVE COPY OF TEXT TO ALMEYDA. HE
STATED PROPOSAL REPRESENTS A MAJOR CONCESSION AND
SUSTANTIAL RISK FOR U. S. IT IS CONCESSION BECAUSE
IT SETS ASIDE FOR PRESENT TIME COMMITMENT CHILE UNDER-
TOOK AT PARIS AND GREAT RISK BECAUSE IT MAKES SETTLEMENT
CONTINGENT ON JUDGMENT OF THIRD PARTY, AS CHILE HAD
SUGGESTED. THAT DECISION AND SETTLEMENT COULD HAVE
GREAT EFFECT NOT ONLY ON COPPER COMPANIES BUT ON THE

AMERICAN COMPANIES AND ON MORE THAN \$80 BILLION OF FOREIGN PRIVATE INVESTMENT THROUGHOUT WORLD. HE REPEATED THIS REPRESENTS SUBSTANTIAL RISK BUT USG MAKES PROPOSAL IN GOOD FAITH AND AFTER CONSIDERATION OF ALL POSSIBLE SOLUTIONS. KUBISCH OFFERED CLARIFY PROPOSAL OR ANSWER ANY QUESTIONS CHILEANS MIGHT HAVE.

10. ALMEYDA EXPRESSED APPRECIATION FOR EFFORTS OF U. S. REPS IN PROPOSING PROCEDURAL FORMULA FOR SOLUTION OF PROBLEM WORRYING BOTH SIDES AND ONE, AS STATED BY

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ASST. SECRETARY KUBISCH, WHICH TAKES INTO ACCOUNT MAJOR CHILEAN CONCERNS. SAID THEY WOULD CONSIDER U. S. PROPOSAL WITH GREATEST ATTENTION BUT NATURALLY DECISION TO ACCEPT, OR POSSIBLY TO SUGGEST ADDITIONS, WOULD HAVE TO BE TAKEN AT HIGHEST GOC LEVEL. CHILEAN SIDE WOULD NOT BE IN POSITION TO GIVE DEFINITIVE REPLY AT THIS TIME. NEVERTHELESS, CHILEAN SIDE WISHED TO TAKE ADVANTAGE OF PRESENCE IN LIMA OF U. S. REPS TO ASK FOR CLARIFICATION, EXPLORE SENSE OF PROPOSAL AND ITS COMPATIBILITY WITH POLITICAL AND LEGAL FRAMEWORK. HE PROPOSED RECONVENING MEETING AFTER CHILEAN SIDE HAD FEW HOURS TO STUDY PROPOSAL. WE MEETING AGAIN AT 6:30 P. M. SUNDAY EVENING.

11. IN SLIGHTLY POLEMICAL TERMS ALMEYDA REFERRED TO HENNESSY'S POINTS ON PARIS CLUB AGREEMENT AND REITERATED CHILEAN CONTENTION GOC NOT OBLIGATED BY ART 4 TO NEGOTIATE DIRECTLY A SETTLEMENT OF COPPER COMPENSATION DISPUTE BECAUSE THAT WOULD HAVE BEEN LEGALLY IMPOSSIBLE FOR NEGOTIATORS TO AGREE TO SINCE IT WOULD BE CONTRARY TO CHILEAN CONSTITUTION. HENNESSY REPLIED TO THESE POINTS AND RAISED FACT THAT IRRESPECTIVE OF GOC INTERPRETATIONS, THE OTHER CREDITORS HAD A CLEAR CONCEPT OF THE MEANING OF ART 4 AND THE GOC COMPLIANCE WOULD BE REVIEWED AS FIRST ORDER OF BUSINESS. MUTUAL BENEFIT OF HAVING REACHED A SATISFACTORY AGREEMENT BEFOREHAND WAS CLEARLY EVIDENT.

12. COMMENT: WHILE OPENING SESSION DEVOTED MOSTLY TO PRESENTING OUR PROPOSAL AND NO IMMEDIATE REACTION FORTHCOMING, CHILEAN ATTITUDE APPEARED RELATIVELY OPEN. BELIEVE OUR DETAILED REVIEW OF BACKGROUND AND EXPOSITION OF OUR PREFERRED POSITIONS AND WILLINGNESS ACCEPT ESSENTIALS OF EARLIER CHILEAN PROPOSAL WAS USEFUL SETTING OF STAGE FOR SUBSEQUENT SESSIONS.

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